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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHAWN BEVERS,

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Case No.: 2:09-cv-2015-RLH-PAL

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Plaintiff,

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O R D E R

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vs.

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(Motion to Lift Preliminary
Injunction #53, Motion to Vacate Order
Dismissing OneWest FSB #56)

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D.R. HORTON, INC.; DHI MORTGAGE
COMPANY, LTD.; EMC MORTGAGE
CORPORATION; ONEWEST BANK as
successor in interest to INDYMAC BANK FSB;
and DOES 1 through 20 inclusive,

)

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Defendants.

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Before the Court is Defendant OneWest Bank, FSB's ("OneWest"), as successor in interest to IndyMac Bank, FSB ("IndyMac"), **Motion to Lift Preliminary Injunction** (#53), filed February 26, 2010.

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Also before the Court is Plaintiff Shawn Bevers' **Motion to Vacate Order Dismissing OneWest FSB** (#56), filed June 24, 2010.

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BACKGROUND

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In late 2006, Bevers purchased the real property located at 8225 Fair Falls Lane in Las Vegas ("Fair Falls property") by executing two mortgage loans prepared by D.R. Horton and

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1 its preferred lender, DHI Mortgage (“DHI”). Bevers claims D.R. Horton and DHI misled him
 2 regarding a number of the terms of these loans. Bevers further alleged OneWest is liable for fraud
 3 in the inducement and quiet title based on its status as an assignee of the original mortgage loans.
 4 The Court directs the reader to its previous Order (Dkt. # 52, Jun. 2, 2010) for a detailed factual
 5 and procedural history of this case.

6 On June 2, 2010, the Court dismissed OneWest Bank from this case. This
 7 prompted OneWest to ask the Court to lift the preliminary injunction it placed on the Fair Falls
 8 property. Bevers has also asked the Court to reconsider its decision. For the reasons discussed
 9 below, the Court denies Bevers’ motion to reconsider and grants OneWest’s motion to lift the
 10 preliminary injunction.

11 DISCUSSION

12 I. Bevers’ Motion for Reconsideration

13 A. Legal Standard

14 Motions for reconsideration may be brought under 60(b) of the Federal Rules of
 15 Civil Procedure. Under Rule 60(b), a court may relieve a party from a final judgment, order, or
 16 proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or excusable
 17 neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has
 18 been satisfied; or (6) any other reason justifying relief. A motion for reconsideration is properly
 19 denied when it presents no arguments that were not already raised in its original motion. *See*
 20 *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985); *see also Resolution Trust Corp. v.*
 21 *Holmes*, 846 F.Supp. 1310, 1316 (S.D. Tex. 1994) (holding that motions for reconsideration are
 22 not “the proper vehicles for rehashing old arguments”) (footnotes omitted); *Durkin v. Taylor*, 444
 23 F.Supp. 879, 889 (E.D. Va. 1977) (holding that motions for reconsideration are not “intended to
 24 give an unhappy litigant one additional chance to sway the judge”).

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1 **B. Analysis**

2 Bevers contends that the Court mistakenly dismissed OneWest for two reasons.
 3 First, Bevers asserts that his counsel inadvertently and mistakenly cited the law concerning
 4 assignee liability. Rather than relying on *Rocker v. KPMG, LLP*, 148 P.3d 703 (Nev. 2006), in
 5 which the court allowed plaintiffs to plead misrepresentation under a relaxed pleading standard,
 6 Bevers now argues that 15 U.S.C. § 1641(a) of the Truth in Lending Act (“TILA”), which governs
 7 assignee liability in the mortgage context, supports his claim against OneWest. Second, Bevers
 8 states that OneWest cannot claim it was unaware of his claims because OneWest acquired his
 9 mortgage loan during the course of this litigation. The Court will address Bevers’ assertions in
 10 turn.

11 **1. TILA Assignee Liability**

12 In general, TILA provisions allow consumers to assert claims against mortgage
 13 assignees when certain conditions are met. TILA § 1641 provides:

14 “Any person who purchases or is otherwise assigned a mortgage referred to in
 15 section § 1602(aa) of this title shall be subject to all claims and defenses with
 16 respect to that mortgage that the consumer could assert against the creditor of the
 17 mortgage, unless the purchaser or assignee demonstrates, by a preponderance of
 18 the evidence, that a reasonable person exercising ordinary due diligence, could not
 19 determine, based on the documentation required by this title [TILA]....”

20 15 U.S.C. § 1641(d)(1). However, to properly state a claim against a mortgage assignee, the TILA
 21 violation must be apparent on the face of the loan documents or mortgage disclosures. 15 U.S.C. §
 22 1641(a) (“[A]ny civil action for a [TILA] violation . . . which may be brought against a creditor
 23 may be maintained against any assignee of such creditor *only if the violation* for which such action
 24 or proceeding is brought *is apparent on the face of the disclosure statement*, except where the
 25 assignment was involuntary” (emphasis added)). A violation apparent on the face of the disclosure
 26 statement may include, but is not limited to: (1) an incomplete or inaccurate disclosure, or (2) a
 disclosure which does not use the terms required by TILA. *Id.* Examining the definition of an
 “apparent” violation, courts have held that § 1641(a) does not impose a duty of additional inquiry

1 on assignees. *Taylor v. Quality Hyundai, Inc.*, 150 F.3d 689, 694 (7th Cir. 1998). Only violations
 2 that “a reasonable person can spot on the face of the disclosure statement or other assigned
 3 documents” will make the assignee liable under the TILA. *White v. Homefield Fin., Inc.*, 545 F.
 4 Supp. 2d 1159, 1168 (W.D. Wash. 2008) (quoting *Taylor*, 150 F.3d at 694).

5 Bevers concludes that the Court has subverted TILA’s intent by dismissing
 6 OneWest from this case and precluding any potential liability it may have as a mortgage assignee.
 7 Although he relies on § 1641 to show the Court that he has properly asserted a claim against
 8 OneWest, Bevers ignores the statute’s central requirement: a violation on the face of the disclosure
 9 statement. Nowhere in Bevers’ complaint, opposition to OneWest’s motion to dismiss, or motion
 10 for reconsideration does he allege any facts to suggest TILA violations were apparent on the face
 11 of the documents or disclosures. Despite this deficiency, the Court previously held Bevers alleged
 12 sufficient facts to support his claim against D.R. Horton and DHI for bait-and-switch tactics
 13 amounting to misrepresentation. Nevertheless, his misrepresentation claim against assignee
 14 OneWest fails as a matter of law without an allegation that a reasonable person could spot D.R.
 15 Horton and DHI’s TILA violation on the face of the documents or disclosures.

16 **2. Notice of Potential Assignee Liability**

17 Additionally, Bevers asserts the Court dismissed OneWest in error because
 18 OneWest acquired the mortgage loan during the course of this litigation. Bevers claims OneWest
 19 had knowledge of his claims and as a result, OneWest is barred from asserting that it did not have
 20 notice and is not subject to his claims. Bevers filed this action in Nevada state court on September
 21 8, 2009. According to the Clark County Recorder’s office, the subject property was assigned to
 22 OneWest on September 24. However, Court records indicate Bevers did not effectuate service
 23 upon OneWest with the summons and complaint until October 9—more than two weeks after the
 24 assignment. (Dkt. #33, Aff. of Service.) Bevers’ assertion thus fails because OneWest did not
 25 receive service until after he filed this lawsuit. Nevertheless, even if OneWest had received
 26 service, Bevers failure to plead a violation apparent on the face of the documents or disclosures

1 would still preclude his claim. TILA does not require an assignee to have actual notice of
2 potential liability for plaintiffs to properly bring a claim against an assignee; instead it requires a
3 violation that “a reasonable person can spot on the face of the disclosure statement or other
4 assigned documents.” *White*, 545 F. Supp. 2d at 1168. For these reasons, the Court finds that
5 Bevers has not carried his burden under Rule 60(b) to justify relief. Accordingly, Bevers’ motion
6 for reconsideration is denied.

7 **II. One West’s Motion to Lift Preliminary Injunction**

8 Once the Court dismissed it from this case, OneWest asked the Court to lift the
9 preliminary injunction on the Fair Falls property. OneWest correctly points out that the remaining
10 Defendants, D.R. Horton and DHI, no longer have an interest in the Fair Falls property. Thus,
11 equitable remedies related to the Fair Falls property will not be available to Bevers against those
12 Defendants. Because the Court denies Bevers’ motion to reconsider OneWest’s dismissal from
13 this case, the Court lifts the preliminary injunction on the Fair Falls property.

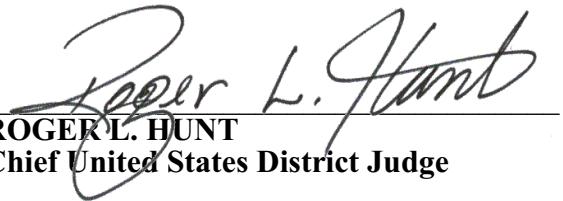
14 **CONCLUSION**

15 Accordingly, and for good cause appearing,

16 IT IS HEREBY ORDERED that Bevers’ Motion to Vacate Order (#56) is
17 DENIED.

18 IT IS FURTHER ORDERED that OneWest Bank, FSB’s Motion to Lift
19 Preliminary Injunction (#53) is GRANTED. If OneWest chooses to pursue non-judicial
20 foreclosure on the Fair Falls property, the Court instructs OneWest to file an updated and revised
21 notice of default and election to sell in accordance with NRS 107.080(3).

22 Dated: June 29, 2010.

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24 ROGER L. HUNT
25 Chief United States District Judge
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